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REGION IV

IN THE MATTER OF:) PROCEEDINGS UNDER SECTIONS
) 104, 122 AND 106(a) OF THE
) COMPREHENSIVE ENVIRONMENTAL
) RESPONSE, COMPENSATION,
) AND LIABILITY ACT OF 1980, AS
SAAD TROUSDALE ROAD SITE) AMENDED BY THE SUPERFUND
) AMENDMENTS AND REAUTHORIZATION
NASHVILLE, TENNESSEE) ACT OF 1986, 42 U.S.C.
) SECTIONS 9606(A) AND 9622
)
) Docket No.: 95-1-C

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereinafter "Order" or "Consent Order") is entered into by the United States Environmental Protection Agency ("EPA") and the parties listed in Appendix "A" attached hereto (hereinafter "Respondents"). EPA acts pursuant to the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9604, 9606 and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), P.L. No. 99499, and delegated to the Administrator of EPA by Executive Order No. 12580 dated January 23, 1987, 52 Fed. Reg. 2922, and further delegated to the Regional Administrator of Region IV, EPA, and redelegated to the Director, Waste Management Division. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the State of Tennessee was previously notified of this Order.

Respondents voluntarily agree to undertake all actions required of them by the terms and conditions of this Order for the conduct and implementation of a removal action on property owned by Ellis and Kathy Saad at the following location:

Saad Trousdale Road Site
3655 Trousdale Road
Nashville, Tennessee,

and on adjacent properties as described in the approved work plan referred to below. Solely for the purposes of this Order, Respondents consent to and agree not to contest EPA jurisdiction to issue this Order. Respondents consent to jurisdiction for purposes of entry and enforcement of this Order by EPA. However, Respondents do not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact, conclusions of law, and determinations made by EPA in this Order and specifically reserve the right to contest any such determinations, allegations, findings of fact, conclusions of

law, and determinations in any proceeding regarding the Saad Trousdale Road Site ("the Site") other than actions brought by EPA to enforce this Order.

Respondents' agreement to this Order shall not be construed as an admission of liability or a waiver of any defenses or affirmative defenses in any proceeding, other than to enforce this Order, Respondents' agreement to this Order shall not be construed as an admission of liability, and Respondents' participation in this Order shall not be admissible in any proceeding other than actions brought by the United States to enforce this Order. Furthermore, Respondents specifically deny any fault or liability under CERCLA/SARA or any other statutory or common law and any responsibility for response costs or damages thereunder, and do not, by signing this Order, waive any rights they may have to assert claims under CERCLA/SARA or any other statute or common law against any person, other than the United States, as defined in Section 101(21) of CERCLA, 42 U.S.C. S 9601(21).

II. PARTIES BOUND

This Consent Order shall apply to and be binding upon the following parties:

1. The Respondents listed in Appendix "B", their successors and assigns and anyone acting in the capacity of an agent, officer, director, employee of a Respondent, and all persons, including, but not limited to, firms, corporations, contractors and consultants, acting under or for Respondents; and
2. EPA and its agents, employees and contractors.

This Order shall not be construed to impose additional personal liability on any individual beyond that imposed under CERCLA, SARA or any other statute.

III. EPA'S FINDINGS OF FACT

For purposes of this Consent Order, EPA finds that:

1. The Saad Trousdale Road Site is located in an industrial/commercial district in Nashville, Tennessee;
2. Oil and solvents have been detected in soil on site. There is a fence around the property. However, the access to the Site is not completely limited.
3. Results of EPA sampling indicated the presence of waste oil, herbicides, methylene chloride and other solvents, and various metals at the Site in both the groundwater and the soil;

4. Hazardous substances as defined in Section 101(14) of CERCLA and subject to the terms and provisions of CERCLA are present at the Site;
5. At the time potentially responsible parties (almost all of which are Respondents under this Order) executed the Administrative Order by Consent dated April 11, 1990 ("original Order"), there was reason to investigate whether stormwater runoff from the Site contributed to flooding problems in the area;
6. Those Respondents removed and disposed of exposed drums, tanks, and tank contents on the Site pursuant to Section VI, Paragraph 1 of the original Order;
7. Those Respondents investigated an area at the Site thought to be a sinkhole and submitted a report to EPA dated July 2, 1991 regarding the findings of the investigation pursuant to Section VI, Paragraph 2 of the original Order;
8. The July 2, 1991 report concluded that there was no discrete sinkhole at the Site but that additional investigatory and removal work was necessary in order to determine the extent of contamination at the Site and assess clean-up alternatives;
9. On July 19, 1991, those Respondents submitted a proposed work plan to EPA for performance of additional work;
10. On August 22, 1991, with the approval of EPA's OSC, those Respondents began field work described in the July 19, 1991 work plan;
11. Pursuant to the original Order and the schedule contained in that Work Plan, on January 13, 1992, those Respondents submitted to EPA a report on the investigatory work and recommendations for further response actions;
12. The January 13, 1992 report submitted to EPA indicated continuing contamination from hazardous substances at the Site, including, but not limited to, ethylbenzene, toluene, xylene, tetrachloroethylene, trichloroethylene, PCBS, cadmium, and lead. The report recommended further removal action to address continuing contamination at the Site and proposed Soil Vapor Extraction (SVE) for this purpose. EPA and the Tennessee Division of Superfund ("TnDSF") technical personnel determined that site geology was not appropriate for SVE and that the proposed further

removal action was inadequate for all of the contaminants involved. EPA and TnDSF recommended the excavation of the source of contamination as the appropriate removal action for the Site.

13. On August 12, 1992, EPA entered into a second Administrative Order on Consent ("second AOC" and, together with the original Order, the "Prior Orders") with approximately one hundred (100) potentially responsible parties (almost all of which are Respondents to this Order) to conclude the removal action at the Site. The terms of the second AOC required Respondents to "use reasonable efforts to obtain Site access agreements from present owners and possessors." Respondents negotiated with Ellis and Kathy Saad a Site access agreement which expired on April 1, 1993 before completion of the Removal Action at the Site.
14. On July 15, 1992, those Respondents submitted a proposed Work Plan to EPA for performance of additional work.
15. In October 1992, with the approval of EPA's OSC, those Respondents began field work described in the July 15, 1992 Work Plan.
16. Pursuant to the second AOC and the schedule contained in that Work Plan, on April 14, 1993, those Respondents submitted to EPA a report on the additional removal action and recommendations that, other than a free product collection system, no further EPA removal action was appropriate. This technology was reviewed by EPA and TnDSF technical personnel and found to be deficient. The report further recommended that the Site be transferred to the jurisdiction of TnDSF. TnDSF expressed a preference for assuming responsibility after EPA has determined that the source of contamination has been removed. However, TnDSF will accept jurisdiction whenever EPA completes its activity at the Site. The report also asserted that some contamination was coming from off-site, but the interpretation of EPA's technical personnel did not support this.
17. On December 30, 1993, U.S. EPA responded to Respondents' report rejecting its conclusions and demanding that additional removal action be conducted. Respondents replied to EPA's response, disagreeing with EPA's demands. Subsequently, EPA and Respondents met to address the disagreements they had on technical matters.

18. Respondents used reasonable efforts to negotiate Site access agreements with Ellis and Kathy Saad to allow the conclusion of the removal action at the Site, but were unable to reach any agreement with Ellis and Kathy Saad.
19. On January 4, 1994, the United States filed a Complaint seeking immediate access to the property for the purpose of conducting response actions necessary to address the release or threat of release of hazardous substances.
20. On April 7, 1994, the Court heard evidence and argument on the United States' Motion for an order in Aid of Immediate Access.
21. On May 23, 1994, the Court issued an Order and Memorandum Opinion granting the United States' motion for immediate access (the "Access Order", which term shall include any amendments). The Court found that the evidence showed that there had been a release of hazardous substances at the Site, therefore, the United States' demand for entry was not arbitrary or capricious, was not abuse of discretion, and was otherwise in accordance with the law.
22. Respondents have submitted a work plan and schedule, have proposed and designated Signal Environmental Services Inc. as their Contractor to perform the work required under this Order, have designated Greg V. Veal as the qualified professional under whose direction and supervision the work required under this Order will be performed, and have designated Bennie L. Underwood, of de maximis, inc., as their Project Coordinator for the work to be performed under this Order. EPA has approved of this work plan, this schedule, this Contractor, this qualified professional, and this Project Coordinator.

IV. EPA'S CONCLUSIONS OF LAW

Based on EPA's Findings of Fact set out above, EPA concludes that:

1. The above-referenced Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);
2. Respondents are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

3. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at the Site;
4. Past and potential migration of hazardous substances from the Site constitutes an actual or threatened release of a hazardous substance into the environment within the meaning of Section 101(22) and 106(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9606(a).

V. EPA'S DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law and the entire record of this proceeding, EPA has determined that:

1. The release or threat of release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment;
2. In order to protect public health and welfare and the environment, it is necessary that action be taken to mitigate the release or threat of release of hazardous substances from the facility into the environment; and
3. The actions required in this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300.

VI. ORDER

The Parties having reached a resolution of the issues involved in this proceeding, it is hereby AGREED and ORDERED that Respondents shall undertake the following activities pursuant to CERCLA §§ 104, 106, and 122, 42 U.S.C. §§ 9604, 9606 and 9622:

1. Within thirty (30) days after Respondents receive notice of EPA's execution of this Order, Respondents shall initiate any removal work set out in the approved work plan. Respondents shall perform the work in accordance with the schedule set out in the approved work plan.
2. In accordance with the schedule set out in the approved Work Plan, Respondents shall submit to EPA a report on the results of the work required by the approved Work plan. This Work Plan is hereby incorporated and made an enforceable part of this Order and is attached hereto as Exhibit A.
3. Any offsite disposal facility utilized must be in compliance with EPA's Offsite Policy. Respondents

shall provide adequate verification and documentation that any hazardous wastes removed are treated and/or disposed of at approved RCRA treatment and/or disposal facilities.

4. Respondents shall comply with all federal, state and local laws applicable to any action described above.
5. All removal work performed pursuant to this Order shall be under the direction and supervision of a qualified professional with expertise and experience in hazardous substance site clean-up. Respondents shall notify EPA as to the identity of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their work at the Site. Respondents reserve the right to change this qualified professional upon prior written notice to EPA. EPA reserves the right of disapproval of any engineer or other professional selected by Respondents.
6. Respondents shall use quality assurance, quality control, and chain-of-custody procedures in accordance with EPA, Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, February 1, 1991) throughout all sample collection and analysis activities. The Respondents shall consult with EPA in planning for all sampling and analyses.
7. All sampling collection, sample preservation, chain-of-custody, laboratory analyses, and quality assurance procedures utilized by Respondents pursuant to this Order shall be documented and made available to EPA upon request.
8. Upon request by EPA, Respondents shall provide EPA or its designated representatives under this Consent Order with duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this Order, and EPA agrees to provide to Respondents the results of any analysis performed by EPA on such samples. Upon request, EPA shall also provide Respondents with duplicate and/or split samples and resulting analyses for any samples collected by EPA at the Site.
9. Respondents' Project Coordinator shall be responsible for implementation of this Order and the activities required herein. The Project Coordinator shall have full authority to make decisions on behalf of Respondents as required under this Order and the

approved Work Plan, including, but not limited to, the ability to commit additional resources and the ability to take rapid actions (i.e., emergency response), all with minimal consultation. All reports, comments and other correspondence directed to Respondents will be made available to the Project Coordinator. Respondents reserve the right to change the Project Coordinator upon prior written notice to EPA. EPA reserves the right to disapprove of any Project Coordinator selected by Respondents.

10. EPA shall appoint an OSC who shall have the authority vested by the National Contingency Plan at 40 C.F.R. Part 300. The OSC or any other EPA designated representative at the Site will have the right to move freely about the Site at all times when work is being carried out pursuant to this Order. The OSC will advise Respondents as soon as the OSC becomes aware that any action taken pursuant to the work plan is not consistent with the National Contingency Plan.
11. All correspondence, reports, work plans, and other writing required under the terms of this Order, to be submitted to EPA shall be sent by certified mail, return receipt requested, to the following addressees or to such other addressees as Respondents or EPA hereafter may designate in writing:

Fred Stroud
On-Scene Coordinator U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-3931

with a required copy to:

Wilda Cobb
Office of Regional Counsel, U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-2641, extension 2277

12. All correspondence, reports, and other writings required under the terms of this Order to be submitted to Respondents shall be by certified mail, return receipt requested, to the following address:

J. Andrew Goddard
Bass, Berry & Sims
2700 First American Center
Nashville, Tennessee 37238
(615) 742-6224

13. All records produced by Respondents and delivered to EPA in the course of implementing this Order shall be available to the public unless identified and substantiated as confidential business information by Respondents in conformance with 40 C.F.R. Part 2. Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. No analytical data, including sampling and monitoring data or hydrological or geological information, shall be considered confidential.
14. Respondents shall designate a representative who shall preserve all records developed pursuant to implementation of any and all Consent Orders executed by the parties for a period of at least six (6) years following completion of all work conducted by Respondents pursuant to this or any subsequent Order.
15. Access to the portion of the Site owned by Ellis and Kathy Saad shall be pursuant to the Access Order. If different or additional access to this portion of the Site is necessary, EPA and Respondents will work together to obtain that access. Respondents shall provide access to all other Site and off-Site areas to which access is necessary to implement this Order. This access shall be provided to EPA and its employees, contractors, consultants, or designated representatives for the purposes of overseeing the implementation of this Order.

To the extent that work areas are presently owned by parties other than those bound by this Order, Respondents have obtained or will use reasonable efforts to obtain Site access agreements from present owners and possessors. Such agreements shall provide access to EPA and/or their authorized representatives. In the event that Respondents cannot obtain Site access agreements within fourteen (14) days, the Respondents shall notify EPA within an additional fourteen (14) days regarding both the lack of, and efforts to obtain, such agreements. In such event, EPA may assist Respondents, or assume the responsibility of obtaining such access and may seek recovery from Respondents and/or other parties of the costs associated with such activities.

16. Upon agreement of the Parties, this Order shall be amended as necessary to address any additional removal work necessary to adequately decontaminate the Site in order to protect public health and the environment or for any other reasons as the Parties may find mutually desirable.

17. Any modifications pertaining to the work to be accomplished or any activities required hereunder must be reduced to writing by a duly authorized representative of the Respondents and the OSC within 48 hours after agreement is reached, so that there will be no delay in accomplishing the work requirements.
18. Notwithstanding compliance with the terms of this Order, Respondents may be required by EPA pursuant to its statutory authority to take further actions as necessary to abate the endangerment posed by conditions at the Site consistent with applicable law.
19. In the event that the OSC determines that activities implemented by Respondents are not in compliance with this Consent Order or that any other circumstances or activities are creating an imminent and substantial endangerment to the public health or welfare or the environment, the OSC may order Respondents to halt further implementation of this Consent Order for such period of time as is necessary to abate the endangerment. In addition, EPA reserves the right to carry out all activities pursuant to this Order and such other activities as it deems necessary and not inconsistent with the NCP, including but not limited to federally funded response activities and subsequent cost recovery actions.
20. Neither the United States nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors, or assigns, or of any persons including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Order.
21. Respondents acknowledge that EPA will incur costs at the Site after the effective date of this Order for oversight of Respondents' activities at the Site and that EPA has incurred costs at the Site for oversight of Respondents' activities at the Site pursuant to the Prior Orders. Respondents shall fully reimburse EPA for these oversight costs, as well as for any costs incurred by EPA pursuant to Sections VI-15 and VI-22, within forty-five (45) days after receipt of EPA's written demand for payment, which shall include a breakdown of those costs. Payment shall be made by certified or cashier's check to "EPA Hazardous Substance Superfund" and sent to:

United States Environmental Protection Agency
Region IV
Attn: Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

with a required copy to:

Wilda Cobb
Office of Regional Counsel
U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Respondents may dispute all or part of a demand by EPA for these oversight costs if Respondents allege that EPA has made an accounting error or included oversight costs not incurred under this Order or if Respondents allege that a cost item is inconsistent with the NCP.

It is EPA's intent to seek reimbursement for its oversight costs first from potentially responsible parties that are not Respondents under this Order ("nonrespondents"). However, Respondents may not dispute payment of oversight costs demanded by EPA on the basis that EPA has not pursued nonrespondents first nor on the basis that EPA has not expended enough effort to recover from nonrespondents first.

While no decision by EPA to enter into a settlement with a nonrespondent shall be subject to dispute resolution under this Order, EPA agrees that it will not accept such a settlement without first discussing with Respondents' representative the amount to be paid by that nonrespondent, the basis for determining that amount, and the fairness thereof. EPA shall notify Respondents in writing of any oversight costs that EPA recovers from nonrespondents.

22. Respondents are advised that, pursuant to Section 106(b) of CERCLA, willful violation of or failure to comply with this Consent Order or any portion thereof may subject Respondents to a civil penalty of not more than \$25,000 for each day in which such violations occur or in which such failure to comply continues. Failure to comply with this Order or any portion thereof without sufficient cause may also subject Respondents to liability pursuant to Section 107(c)(3) of CERCLA for damages in the amount of three (3) times the total of all costs incurred by the government as a result of Respondents' failure to take proper action. If the representatives of EPA and Respondents disagree

on when dewatering should cease pursuant to the approved Work Plan and this dispute is not resolved in the Negotiation Period pursuant to Section VI-26, then failure by Respondents to continue dewatering shall not constitute a violation of, or failure to comply with, this Order. EPA may nevertheless itself proceed with further dewatering and completing any other activities required by the approved Work Plan, and may seek recovery from Respondents and/or other parties of costs associated with such activities. Respondents have not agreed, or by execution of this Order obligated themselves, to pay such costs associated with the further dewatering activities.

23. Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, firm, partnership, or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, or taken to or from, the Site. This Order does not constitute preauthorization of funds under Section 111(a)(2) of CERCLA. Further, Respondents waive any rights they may have to seek reimbursement from the Superfund under Sections 106(b)(2), 111 and 112 of CERCLA for any costs incurred or to be incurred by Respondents in performing the removal action at the Site and complying with the terms of this Order.
24. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or any other writing submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approvals as may be required herein.
25. Respondents' activities under this Order shall be performed within the time limits set forth in the attached Work Plan, unless performance is delayed by events which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents (examples of potential force majeure events include but are not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable labor strikes, unexpectedly adverse weather conditions, contractor failures, and the unforeseeable and unavoidable inability to obtain necessary permits, Site access authorization, licenses, certification).

Inability to obtain necessary permits, site access authorization, licenses and/or certification shall be deemed unforeseeable and unavoidable only where Respondents have acted in a timely fashion in trying to obtain the necessary permits, authorization, licenses and/or certification. Increased costs incurred by Respondents in conducting the removal action or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

Respondents shall notify EPA by telephone within three (3) business days and in writing no later than seven (7) business days from the date Respondents knew or should have known of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. EPA shall decide, based on all information available, whether a force majeure occurred and to what extent the schedule affected by the delay must be extended. Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

26. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any EPA action taken pursuant to this Order, including billings for future response costs, the Respondents shall notify EPA in writing of their objection (i) within forty-five (45) days of receipt of notice of such action if it is billings for response costs, and (ii) within 10 business days of receipt of notice of such action for all other actions, unless the objections have been informally resolved.

EPA and Respondents shall within ten (10) business days from EPA's receipt of the Respondents' written objections attempt to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

Any agreement reached by the parties pursuant to this section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period an EPA management official at the Director of Waste Management Division level or higher will issue a written decision on the dispute to the Respondents. The decision of EPA shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of the EPA decision regarding the dispute. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section.

Following resolution of the dispute, as provided by this section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review.

27. The work described by this Order is consistent with the National Contingency Plan (NCP) and the costs incurred by Respondents in performing this work shall not be considered to be a penalty.
28. The effective date of this Order shall be the date of its execution by the Director, Waste Management Division. Notice of the execution shall be given to Respondents and shall be deemed to have been received by Respondents upon receipt by J. Andrew Goddard, for Respondents.

VII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section IX (Notice of Completion), EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform removal actions agreed to in this Order or the Prior Orders except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration of Respondents' agreement to perform their obligations under this Order, including payment of any oversight costs owed by them pursuant to Section VI-21, EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA for recovery of oversight costs incurred

by the United States in connection with this Order or the Prior Orders or the removal actions taken under any of them. This covenant not to sue shall take effect upon any of (i) the receipt by Respondents of notice from EPA pursuant to Section VI-21 that EPA has recovered all of its oversight costs from nonrespondents, (ii) the receipt by EPA of all payments required by Section VI-21, or (iii) a determination by EPA that any costs not so recovered or paid are not owed by Respondents.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

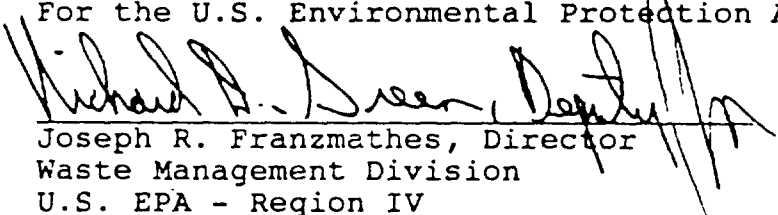
VIII. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order or the Prior Orders, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondents from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

IX. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report required by the attached Work Plan, that all removal actions required under this Order and the approved Work Plan have been fully performed in accordance with this Order and the approved Work Plan, with the exception of any continuing obligation to pay oversight costs pursuant to Section VI-21 or other continuing obligations required by this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions required under this Order or the approved Work Plan have not been completed in accordance with this Order and the approved Work Plan, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall correct such deficiencies and submit a modified Final Report in accordance with the EPA notice.

For the U.S. Environmental Protection Agency:


Joseph R. Franzmathes, Director
Waste Management Division
U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Date: 

EXHIBIT A

10 11 0050

**SAAD SITE
PHASE III REMOVAL ACTION
WORK PLAN**

Submitted by:

Saad Site Steering Committee

September 20, 1994

TABLE OF CONTENTS

10 11 0051

1.0	INTRODUCTION	1
1.1	Background/History and Previous Removal Activities	1
1.2	General Site Description	1
1.3	Objectives	2
1.4	Project Organization	2
1.5	Site Management	2
1.6	Health and Safety/Quality Assurance and Control	3
1.7	Contractor	3
2.0	MOBILIZATION/SITE PREPARATION	3
2.1	Transition and Security	4
2.2	Site Work Zone Definition	4
2.3	Decontamination Facilities	4
2.4	Materials Handling and Staging	6
2.5	Field Office Facilities	6
3.0	EXCAVATION/REMOVAL PLAN	7
3.1	Excavation Methodology	8
3.2	Post Excavation	9
3.3	Stockpile/Soils Sampling	9
3.4	Decontamination/Excavation Water	11
3.5	Debris/Soils Loading	11
3.6	Other Considerations	12
4.0	DISPOSAL	12
5.0	SCHEDULE	13

1.0 INTRODUCTION

10 11 0052

This Removal Action Work Plan has been prepared on behalf of the Saad site Steering Committee (Committee) in conjunction with the Administrative Order by Consent (AOC), EPA Docket No. 95-1-C, dated October 5, 1994, to complete removal activities at the site. This Work Plan is based on information developed during Phase I and Phase II site removal and characterization investigations. The U.S. EPA and the committee have agreed to implement this Work Plan for the limited and discrete removal activities described herein.

1.1 Background/History and Previous Removal Activities

A detailed/description of past activities associated with Saad Site removal and site characterization activities has been provided in the Removal Action/Field Investigation Report (RA/FI) submitted to the U.S. EPA, Region IV in March 1992 and the Saad Site RA/FI Phase II report submitted in April 1993. A detailed summary of the combined removal activities can be found in the RA/FI Phase II report.

1.2 General Site Description

The general site description for the site for the purposes of this Work Plan is the area to which access is necessary to implement this Work Plan, being the property owned by Ellis and Kathy Saad at 3655 Trousdale Drive, the property owned by Franklin Brick Company at 3567 Trousdale Drive, and the portion of the property owned by CSX that is immediately to the west of these two sites and to the east of the railroad berm on the east side of the CSX property, all in Nashville, Tennessee.

1.3 Objectives

The objective of this Work Plan is to detail the project scope to address additional discrete soil and debris removal activities on the Franklin Brick property in the area to the west of the Franklin Brick building as specified in Section 3.0 (see Figure 1).

1.4 Project Organization

The general Project Organization for performance of the proposed removal action will remain the same as described in Section 1.5 and Figure 1-3 of the Removal Action Field Investigation Work Plan, Phase II, for the Saad Trousdale Drive Site, Nashville, Tennessee, July 1992. Completion of this discrete removal action will complete removal activities at the Saad Site.

1.5 Site Management

General Site Management responsibilities as presented in the RA/FI Phase II, Section 1.6, page 1-6 of the Removal Action Field Investigation Work- Plan, Phase II, for the Saad Trousdale Drive Site, Nashville, Tennessee, July 1992 will remain the same for the proposed removal activity.

1.6 Health and Safety/Quality Assurance and Control

The Health and Safety/Quality Assurance and Control activities associated with the removal action will conform to Section 1.8, of the Removal Action Field Investigation Work Plan, Phase II, for the Saad Trousdale Drive Site, Nashville, Tennessee, July 1992 to include Appendices I, Quality Assurance Project Plan, and Appendix II, Revised Health and Safety Plan.

1.7 Contractor

All references herein, or in documents referred to herein, to "Contractor", "Project Manager" or "Site Manager" shall refer to Signal Environmental Services, Inc., or alternate chosen by the Committee.

2.0 MOBILIZATION/SITE PREPARATION

Site mobilization and preparation prior to initiating the Work Plan Tasks will include and/or require the following:

- (1) Written approval of the Removal Action Work Plan from EPA.

- (2) The current lessee of the Saad Building and property will be required to clear the Saad property of any equipment that may obstruct the removal action. The Saad property will be used as the staging area for excavated soils and debris.
- (3) Signed access agreements, as appropriate, to allow performance of work plan tasks.
- (4) Additional security fencing, gates, and locks will be installed as necessary to restrict access to the site and to allow effective equipment and vehicles access/egress for the site activities.
- (5) Construction of designated fluid holding tank area for accumulated water and excavation associated decontamination waters.
- (6) Removal of a portion of the existing rail line on the Franklin Brick property and the placement of a rail stop to protect the removal action associated personnel and equipment and allow continuous business activities to be performed at the Franklin Brick Yard. This activity will be performed by an approved contractor. Replacement of rails will be performed by a contractor approved by Franklin Brick and CSX, with CSX personnel providing installation inspection, as appropriate.

2.1 Transition and Security

Upon the later of 30 days after the Committee receives notice of EPA's execution of the AOC, Contractor will initiate mobilization of the necessary personnel, equipment, and materials to facilitate temporary site security necessary to begin site activities. Site security for the proposed field activities will be established following the removal of all equipment currently stored on site by the current tenant/owner of the property. Site security measures will include the following:

- Temporary fencing and placarding as necessary to restrict site access.
- Establishment of the Site command post which will be the designated entry into the Site for all site personnel, visitors, etc.

Permanent security measures now in place will be maintained during the work, to include permanent perimeter fencing, security lighting, and placarding.

2.2 Site Work Zone Definition

The Work Zones and associated levels of personnel protection have been previously provided in Section 1.7 of the July 1992 RA/FI Phase II Work Plan. Areas in which site excavation and staging activities are being performed will be designated as the Exclusion Zone.

The Contaminant Reduction Zone (CRZ) is the transition area between the potentially contaminated area and the clean area. This zone will include all decontamination areas. Multiple personnel and equipment decontamination areas are expected during project implementation.

The Support Zone is the location of administration and other support functions needed to keep the operations in the Exclusion Zone and Contaminant Reduction Zone running smoothly.

2.3 Decontamination Facilities

Decontamination Facilities/Methods - Initial decontamination areas will be located in the general area indicated in Figure 2. Multiple decon areas are anticipated due to site excavation and debris staging activities. Water and electricity to support activities will be obtained from the Saad building if possible. If necessitated by space limitations or access restrictions, the decontamination areas will be relocated.

2.4 Materials Handling and Staging

Materials handling and staging will be a significant problem associated with this removal activity. The materials staging map, Figure 2, has been prepared to allow for both accumulation of soils and debris, effective movement of both excavation and staging/loading equipment, and a designated clean area for the loading of debris for off site disposal eliminating constant decontamination of equipment.

Additional space has been left for potential segregation activities, movement of any debris that, based on TCLP analysis is characteristically hazardous for waste disposal.

All debris will be placed on and covered with plastic sheeting. A berm will be constructed with straw/hay for each soil/debris pile. These bermed areas will be reused during the course of this removal action.

2.5 Field Office Facilities

For purposes of this Work Plan, it is assumed that the former LTD Body Shop building will not be available for use as headquarters for operations and for storage of equipment and materials. Therefore, a field headquarters will be installed as appropriate.

3.0 EXCAVATION/REMOVAL PLAN

Removal activities will consist of the excavation of an area on the Franklin Brick property in the area of the former settling basin. The lateral limits of the excavation area are shown on Figure 1 and are as follows:

The area is bounded on the South by the bedrock/concrete washout basin outcropping and that area previously evaluated by past borings B1 and B2 (RA/FI - Phase I) that determined minimal residuals.

The area is bounded on the east side by the Franklin Brick building with a ten (10) foot standoff to prevent potential structural damage to the building. Due to the nature of the fill material, shoring has not been provided for in this plan.

The area is bounded on the west by the previous Franklin Brick Trench (RA/FI - Phase II) from which materials were removed and replaced with clean fill, and by any necessary standoff from the CSX railroad berm.

The area is bounded on the north side by the Saad/Franklin Brick property boundary.

The vertical limit of excavation will be established by the first to be encountered of the following:

- The base of any smear zone;
- The surface of the perched water table after the dewatering efforts described in the paragraph below;
- The practicability limit based on side wall stability and associated potential impacts on structural integrity of the adjoining structures (10 ft. stand-off from the berm and minimum 10 ft. stand-off from the Franklin Brick building); and/or,
- Bedrock.

Dewatering efforts will be made for the purpose of exposing any smear zone for excavation. Dewatering efforts will not proceed beyond what is practicable, the determination of which shall include consideration of results of the dewatering efforts and cost. This determination will be made in the field jointly by EPA's OSC and the Committee's Project Coordinator, and each may designate another authorized representative for this purpose. If these representatives are not able to agree, the dispute resolution procedure of the AOC shall apply and additional dewatering will not be conducted during the negotiation period. The Committee will not be required to continue dewatering efforts in excess of 25,000 gallons. However, if significant progress is being made in the dewatering effort, EPA may continue the process and then complete the work required pursuant to this Work Plan. The Committee acknowledges that EPA has indicated that it will seek to recover its costs for this work.

The maximum volume to be excavated and removed from the site for off-site disposal is 800 cubic yards. In order to provide flexibility for on-site decisions and with the concurrence of the EPA on-site representative, the vertical (subject to the foregoing) and/or lateral (i.e. to the north) extent/direction of excavation as detailed on Figure 1 may be altered, provided that the established maximum volume is not exceeded.

Based on previous analytical and disposal activities, excavated soil/debris is anticipated to be characteristically non-hazardous. As a result, segregation and decontamination of boulders and debris is not planned. Contingent upon actual disposal requirements and associated costs, segregation and cleaning may be conducted, with cleaned materials staged as fill for the excavation.

3.1 Excavation Methodology

Excavation of the area will proceed from a south to north direction. Excavation will not be performed in a lift methodology. Excavation will be performed with a trackhoe with a known bucket size. A bucket with a one yard (1 yard) capacity will be the minimum size allowed on-site. Estimated volumes will be based on the known bucket size.

The excavated materials will be deposited on the Saad Site for transportation to the tentative staging areas (see Figure 2) by the use of a track-loader. Due to the previous excavation performed at the site and the associated "soft spots", rubber tired vehicles/equipment will not be allowed in the active area.

Each soils staging area has been sized to accommodate approximately one hundred fifteen (115) cubic yards (yd^3) of debris/soils. Rolloffs will not be used for soil/debris storage.

Soils/debris will be staged in such an order and manner to allow continuous excavation and simultaneously maintain additional work areas that may be required for non-scheduled segregation, resampling, etc. Actual staging locations and number will be based on site specific conditions.

3.2 Post Excavation

After all excavation activities have been concluded, the excavated pit will be backfilled and mechanically compacted to existing surface grade. The back fill material will be chosen based on both workability and cost. The Franklin Brick rail spur will be replaced and the wheel stop re-installed in its original position.

3.3 Stockpile/Soils Sampling

Two four ounce samples will be collected for each 15 yd^3 excavated and stockpiled, resulting in 14 samples per 115 yd^3 stockpile. Seven (7) of the samples will be composited to make one (1) sample per stockpile for waste disposal characterization using TCLP, full scan analysis. The additional seven (7) samples will be archived at the selected laboratory for a maximum of 90 days. In the event additional

analysis is required, sufficient sample will be available for another composited sample and corresponding analysis. Sampling and analysis plan modifications may be required to meet specific disposal facility requirements.

No characterization, beyond waste disposal requirement, sampling will be performed in conjunction with this removal action. Sampling will be continuous during all excavation/stockpiling activities. Samples will be placed on ice and submitted to the laboratory on a daily basis to expedite off site disposal.

3.4 Decontamination/Excavation Water

Any waters generated during excavation activities will be collected in an appropriate vessel. The accumulated fluids will be sampled for waste disposal analysis for off-site disposal as appropriate and in accordance with U.S. EPA's off-site policy.

3.5 Debris/Soils Loading

Soils and debris will be loaded on trucks for transportation to an appropriate disposal facility following TCLP analysis and manifesting. The trucks used for transportation will have a minimum of twenty (20) cubic yards capacity and 40,000 lb or greater weight limitation.

It is recommended that the trucks are constructed with steel beds, not aluminum, to prevent potential damage to the truck body due to large boulders and other debris. Trucks will be loaded in the designated loading area. A maximum of two trucks will be allowed on site for loading at any one time.

Loading will be performed with a track loader in a manner and an order consistent with laboratory disposal analysis. Trucks will not be decontaminated prior to leaving the site as they will not enter the exclusion zone. To the extent practicable, trucks used for disposal transportation will be delegated to only Saad Site activities and will not be allowed to perform similar simultaneous duties for other clients.

Time/trip tickets will be maintained by the Project Manager. Loading activities will occur at specific intervals to correlate with maximizing loading/disposal efficiency based on disposal analysis and continue until all approved waste has been removed from the site. It is anticipated that loading/disposal activities will occur at least once per week dependent on analysis, disposal firm approvals, and truck availability.

3.6 Other Considerations

During excavation, drums and/or drum bones may be encountered. In the event that drums are found, the site personnel will initiate the appropriate actions and activities previously submitted per the 1992 RA/FI Phase II Work Plan, Section 4.0, Subsection 4.2.2, 4.2.4, 4.3.3, 4.3.6 and 4.4.1. Figure 4-2 of the Phase II Work Plan, the decision tree for characterization/classification of excavated drums, will be used for drum project activity excavation. All applicable sections of the revised health and safety plan previously submitted in the 1992 FA/FI, Phase II, Work Plan for drum activities will be implemented.

4.0 DISPOSAL

Disposal of materials resulting from implementation of this Work Plan will be coordinated with the U.S. EPA and TDEC, and conducted in accordance with disposal facility requirements. Disposal will be performed in compliance with U.S. EPA's off-site policy.

5.0 SCHEDULE

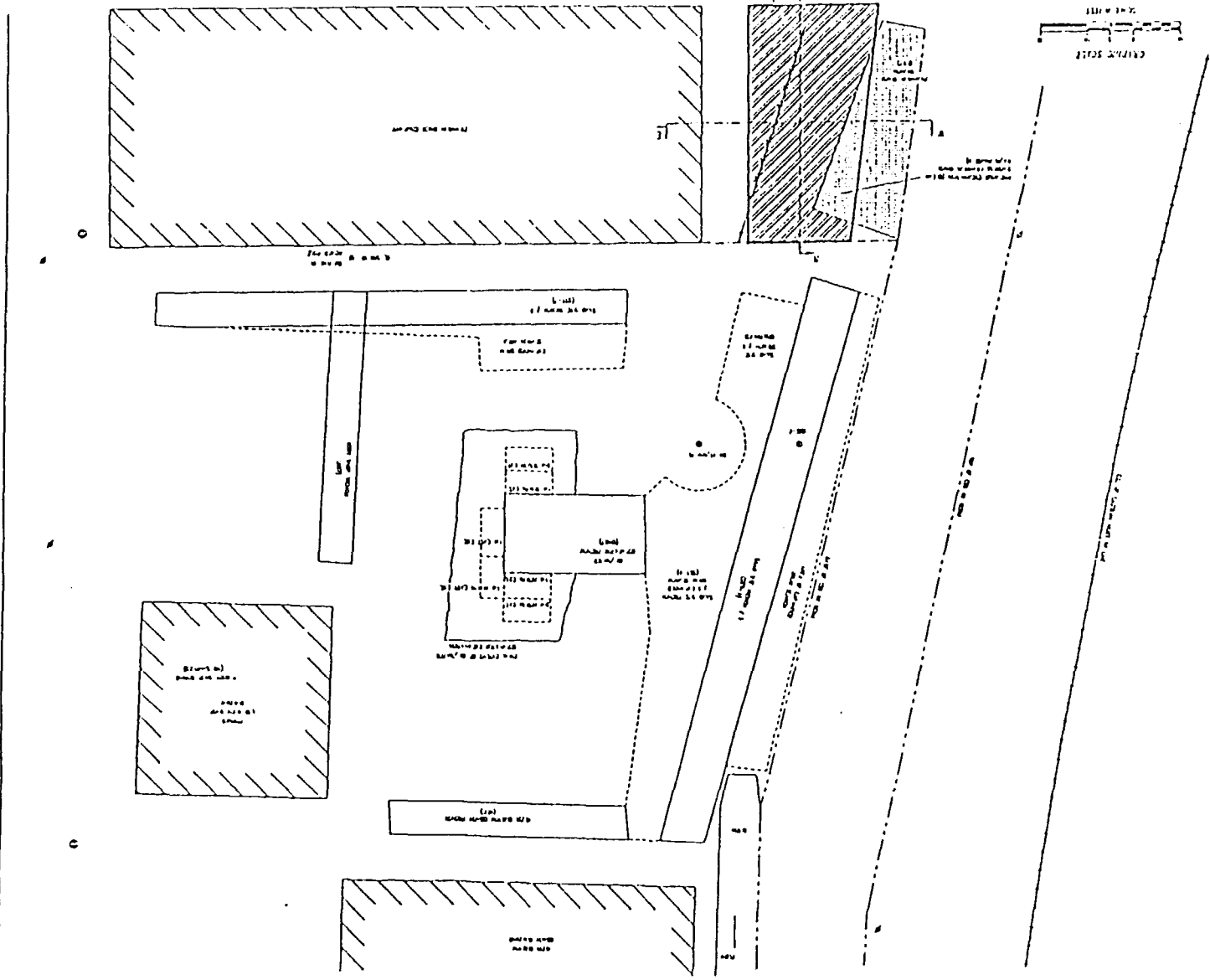
Removal project activities are to be initiated as provided in Section 2.1. All time is estimated on a five-day work week. The schedule will be adjusted in accordance with delays caused by force majeure as defined in Section VI-26 of the AOC and as appropriate in the event of any of the following schedule contingencies.

- Additional activities associated with debris segregation required by either the waste disposal facility or waste hauler.
- Inadequate availability and number of waste haulers contracted for disposal transportation.
- Additional waste disposal sampling.
- Waste disposal schedule changes due to disposal facility requirements and capacity issues, including those occasioned by having to treat or dispose of any excavated material or removed groundwater as a hazardous waste.
- Weather that does not permit work to be performed.

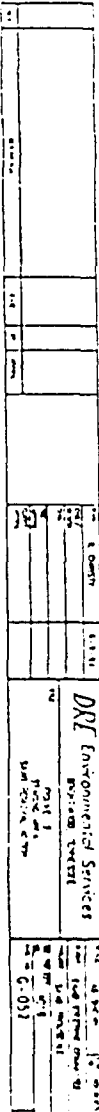
The tentative schedule is as follows (days are working days):

Mobilization - 5.0 days	(1 week)
Excavation/stockpiling/sampling - 60 days	(12 weeks)
Disposal (continuous with site activities) - 70 days	(14 weeks)
Demobilization - 5.0 days	(1 week)
RA/FI Phase III Report - (Post Disposal) - 30 days	(6 weeks)
Total anticipated time for site activities - 75 days	(15 weeks)

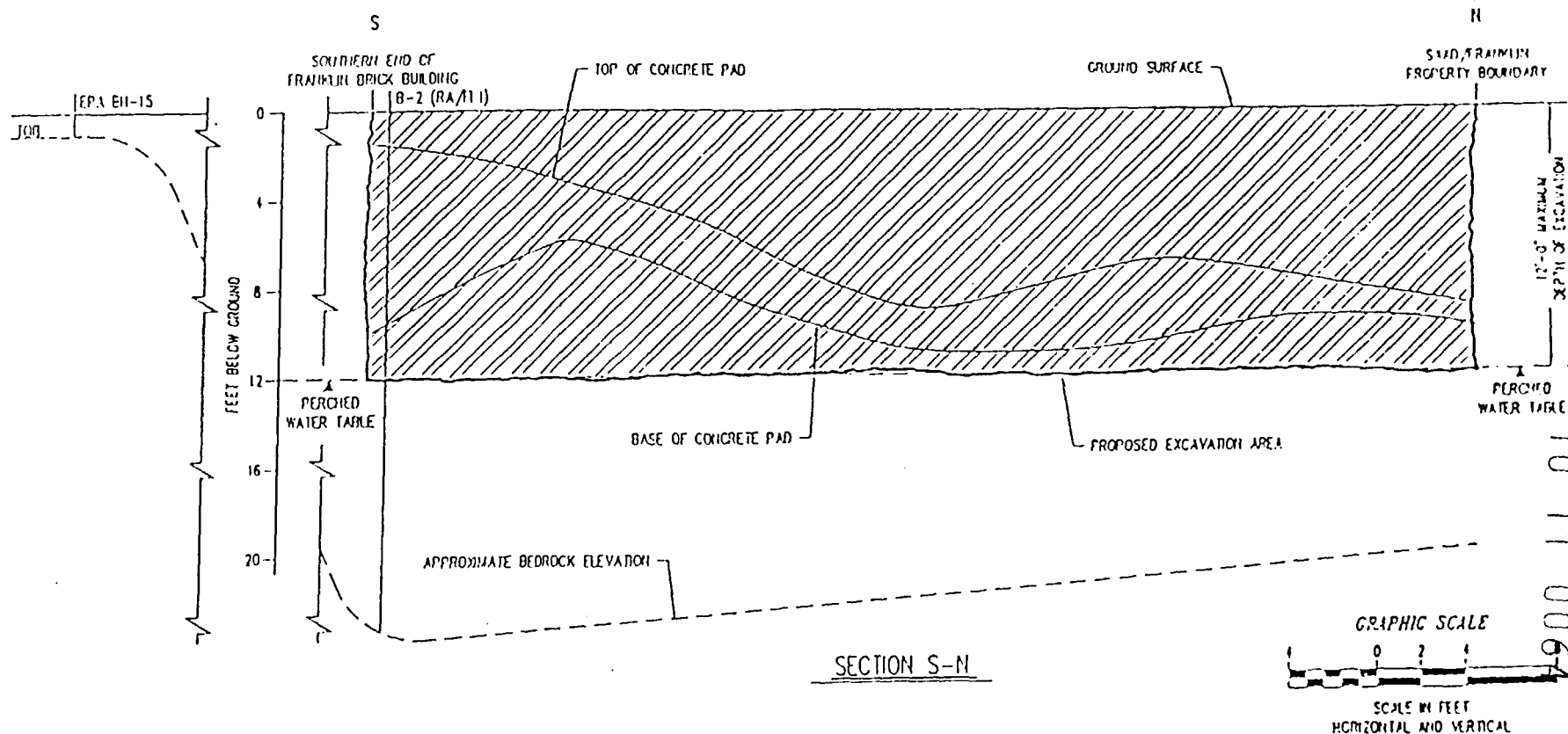
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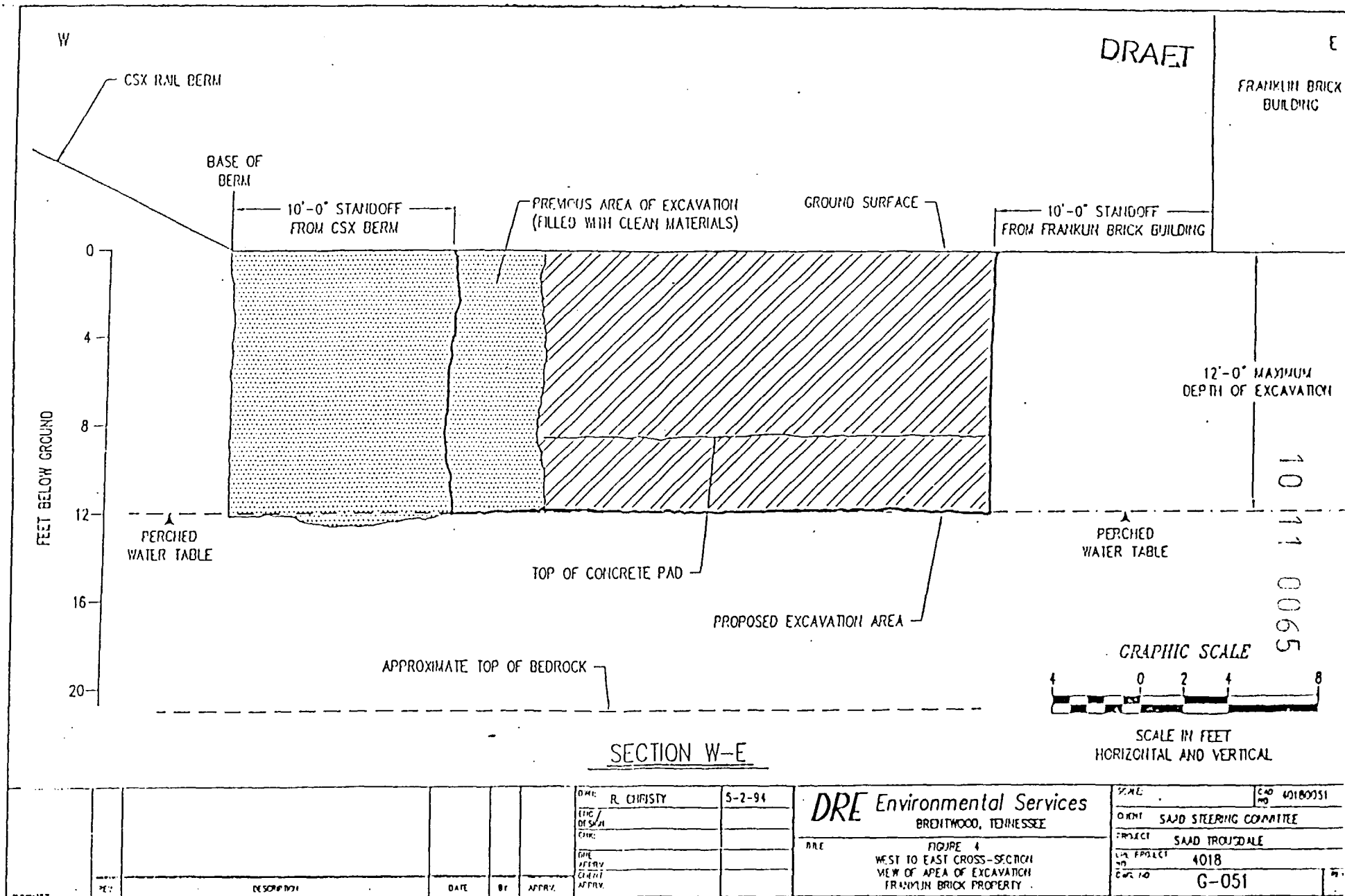
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					DWE R. CHRISTY EDC / DESG / CMC / DWE APPR / CURR / APPR /	5-2-94 	DRE Environmental Services BRENTWOOD, TENNESSEE FIGURE 3 SOUTH TO NORTH CROSS-SECTION VIEW OF AREA OF EXCAVATION FRANKLIN BRICK PROPERTY	SCALE: 1" = 40' 10" 00" CLIENT SAID STEERING COMMITTEE PROJECT SAID TROUSDALE JOB PROJECT 4018 DWE NO. G-050
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

OCT 6 1994

Mr. Andrew Goddard
Bass, Barry & Sims
P. O. Box 1509
Nashville, Tennessee 37901-1509

Re: Saad Trousdale Road Site, Nashville, Tennessee

Dear Mr. Goddard:

Enclosed please find the executed Administrative Order on Consent (AOC) for the Removal Action for the Saad Trousdale Road Site. The AOC becomes effective, pursuant to Section VI-28 of the agreement, on the date of its execution by EPA.

Please have your project manager contact Fred Stroud at 404/347-3931 extension 6138 immediately. The Court ordered access granted to EPA will expire January 23, 1995, therefore the removal action needs to begin as soon as possible.

Thank you for your hard work and cooperation in bringing this phase of the matter to a conclusion. If you have any questions concerning the enclosed, please do not hesitate to call me at (404) 347-2621 extension 2277.

Sincerely,


Wilda W. Cobb
Assistant Regional Counsel

Enclosure